

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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**FINAL STATEMENT OF REASONS****CALIFORNIA CODE OF REGULATIONS****TITLE 8: Chapter 4, Subchapter 4, Article 28, Section 1704  
of the Construction Safety Orders****Pneumatically-Driven Nailers and Staplers****MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM  
THE 45-DAY PUBLIC COMMENT PERIOD**

There are no modifications to the information contained in the Initial Statement of Reasons except for the following substantive modifications that are the result of public comments and/or Board staff evaluation.

**Subsections 1704(c)(3) and (c)(4).**

This rulemaking originally proposed that pneumatically-driven nailers and staplers should be disconnected from the air supply at the tool when: (1) performing any maintenance or repair on the tool, or (2) clearing a jam, or (3) the operator leaves the working level where the tool is, or (4) the worker is over 25 feet from or is out of sight of the tool.

Prior to the Public Hearing, Board staff conducted a study of citations of subsection 1704(b) from 1996-2006 and ascertained that 18 citations were issued during that time, 8 which involved injuries. Of those 8 injuries, one was serious. Unattended tools could possibly have contributed to the incidents in 2 cases; however, those 2 accidents also were associated with untrained individuals picking up and using the nailer in an unsafe manner. All of the 8 citations involving injuries were associated with unsafe work procedures by personnel who were untrained or insufficiently trained.

Subsections (c)(3) and (c)(4) are proposed for deletion from the proposal. The purpose and necessity for this modification is to eliminate ambiguous verbiage which could create confusion among compliance officers and the regulated public, a point emphasized at the public hearing. Commenters also identified other concerns during the public comment period:

- This language represents a greater safety hazard by requiring additional handling of the tool,
- The language is not enforceable, reasonable, and understandable,
- As stated by the national consensus standards sponsoring organization, their standard is a guidance document and was not meant to be regulatory and any attempt to require disconnection of the tool when left unattended in a controlled environment is ineffective and unenforceable.

Summary and Response to Oral and Written Comments:

I. Written Comments

Christopher Lee, Acting Regional Administrator, U.S. Department of Labor, Occupational Safety and Health Administration, Region IX, by letter dated May 15, 2007.

Comment:

Federal OSHA indicated it had reviewed the proposed changes and updates for the requirements for pneumatically-driven nailers and staplers and concluded that the proposed changes provide protection more effective than federal standards for employees utilizing pneumatically-driven nailers and staplers in construction activities.

Response:

The Board thanks Mr. Lee and Federal OSHA for their input and for their participation in the rulemaking process.

Dana Lahargoue, Chair, Safety Steering Committee, Construction Employers' Association (CEA), by letter received June 13, 2007.

Comment:

The CEA represents over 100 mid- to large-sized unionized commercial building contractors, and the proposed standard will impact many of their members. The CEA notes that the proposal incorporated many of the recommendations made by the advisory committee. The CEA stated their support for the proposed changes to CSO Section 1704.

Response:

The Board thanks the CEA for their support and for their participation in the rulemaking process.

Kevin Bland, Esq., General Counsel to the California Framing Contractor's Association (CFCA), by letter received June 13, 2007.

Comment:

The CFCA is comprised of framing contractors throughout California which employ in excess of 50,000 carpenters engaged in residential framing activities.

Mr. Bland stated that the residential building industry is in dire need of clarity and an effective pneumatic nailer standard; however, the CFCA cannot support the proposed standard unless amended to remove subsections (c)(3) and (c)(4) which require the nailer to be disconnected from the air supply whenever the nailer is unattended. He noted that these changes were made after the advisory committee, and they are contrary to the committee consensus.

Mr. Bland commented that the committee considered language similar to subsections (c)(3) and (c)(4) which attempted to define "unattended" in terms of time, distance, possession, sight and other similar considerations, and determined that there was no rational basis to include verbiage

of this nature in the proposal. He noted that the CFCA participated in a study which surveyed pneumatic nail gun accidents from 1984-2004, and the available data indicated that no accidents had, in its opinion, occurred as a result of the nailer being left unattended. He commented that the advisory committee considered these results and chose not to include the language similar to that proposed by subsections (c)(3) and (c)(4) in the consensus standard.

Mr. Bland opined that the inclusion of subsections (c)(3) and (c)(4) will create a greater safety hazard by virtue of requiring more handling of the tool to disconnect and reconnect the air hose whenever the employee must leave it unattended for any period of time.

Finally, Mr. Bland and the CFCA commented that the proposed subsections (c)(3) and (c)(4) will provide little or no practical guidance to the industry and to compliance officers as to when a nail gun should be disconnected from the air supply and opined that these subsections will be nearly impossible to enforce. Therefore, he requested that subsections (c)(3) and (c)(4) be deleted from the proposal.

Response:

Based on this comment and numerous other written and oral comments received on this proposal, as well as a review of available OSHA data, the Board accepts this comment and proposes to delete subsections (c)(3) and (c)(4) from the proposal. The Board thanks Mr. Bland and the CFCA for their participation in the rulemaking process.

Richard Harris, President, Residential Contractors Association (RCA), by letter received June 18, 2007.

Comment:

Mr. Harris noted that the RCA is comprised of framing contractors who are under a master labor agreement with the Carpenters' Union, and their members employ approximately 3750 union carpenters in California.

Mr. Harris and the RCA's comments and requests were substantially similar in content to those of Mr. Bland and the CFCA as discussed above.

Response:

As noted for the CFCA and for reasons stated above, the Board accepts this comment and proposes to delete subsections (c)(3) and (c)(4) from the proposal. The Board thanks Mr. Harris and the RCA for their participation in the rulemaking process.

Brenda Roach, Chair of the Associated General Contractors of California (AGC), Safety and Health Council, by letter received June 18, 2007.

Comment:

Ms. Roach noted that the AGC is a not-for-profit trade association of over 1,166 companies involved in construction as general contractors, specialty contractors, material suppliers, and associate members. Their members employ several hundred thousand persons in the

construction industry. She commented that the AGC has been involved in the development of the update for pneumatic nailers for over two years and that the AGC agrees completely with the comments offered by the CFCA (above).

Ms. Roach opined that the inclusion of subsections (c)(3) and (c)(4) do nothing to improve safety and, instead, allow Division compliance officers to issue citations based on “phantom hazards.” Therefore, the AGC requests the deletion of subsections (c)(3) and (c)(4).

Response:

As noted in response to the CFCA, the Board accepts this request and proposes to delete subsections (c)(3) and (c)(4) from the proposal. The Board thanks Ms. Roach and the AGC of California for their participation in the rulemaking process.

John Kurtz, Executive Vice President, International Staple, Nail and Tool Association (ISANTA), by letter received June 20, 2007.

Comment:

ISANTA represents manufacturers of tools covered by the proposed standards. ISANTA also sponsors the American National Standards Institute (ANSI) standard ANSI/SNT 101-2002. Mr. Kurtz stated that SNT 101-2002 is a guidance document and that while it has limitations on “unattended” tools, he opines that those limitations can be problematic when included in a regulatory document. Mr. Kurtz also noted that SNT 101-2002 is a general document, and requires considered application to particular circumstances, such as supervised work environments where access to tools is limited to trades people (1) who have received training on these tools or (2) who understand that they may not use these tools because of lack of training. Mr. Kurtz stated that ISANTA will be proposing a change to their SNT 101 standard to get away from the term “unattended” and to clarify that the tool is to be disconnected from the power source when the tool is outside the operator’s supervision or control. He concedes, however, that this clarification is still not written to be regulatory, and he is of the opinion that any attempt to require disconnection of the tool when unattended in a controlled work environment is ineffective and unenforceable.

Response:

Although Mr. Kurtz did not specifically request deletion of subsections (c)(3) and (c)(4), the Board interprets his comments as supporting their deletion. The Board thanks Mr. Kurtz and ISANTA for their participation in the rulemaking process.

The following individuals offered written comments substantially similar in nature:

<u>Name:</u>	<u>Title:</u>	<u>Representing:</u>	<u>Letter received:</u>
Jakki Kutz	President	Allied Framers, Inc.	June 14, 2007
Joseph L. Bunker	President	B&B Framing, Inc.	June 15, 2007
Roger Gackenbach	President	California Plastering	June 15, 2007
Randy Cookson	Vice President	California Plastering	June 19, 2007
Marlette Cisneros-	HR/Risk	CalTruss	June 19, 2007

Miller	Manager		
Troy Cobb		T.M. Cobb Co.	June 15, 2007
Neal Drinkward	President	Elliott/Drinkward Construction, Inc.	June 15, 2007
David Tudor	Vice President	GDT Framing	June 19, 2007
Charles Gardenmeyer	President	Gardenmeyer Finish Carpentry	June 18, 2007
Greg Minor	President/CEO	Greg Minor Construction, Inc.	June 18, 2007
Natalie Joens	Chief Ops. Officer	KRC Builders, Inc.	June 14, 2007
Oscar Salas	Safety Coordinator	LB Construction, Inc.	June 19, 2007
P. Vance Lancaster	Vice President	LB Construction, Inc.	June 19, 2007
Ken Munson	Vice President, Field Ops	Lucas & Mercier Construction	June 19, 2007
Patrick McCarthy	President	McCarthy Framing Construction, Inc.	June 21, 2007
		New Mid-Coast Builders, Inc	June 20, 2007
John Williams	CEO	Rancho, Inc.	June 21, 2007
Dennis DeLucio	Secretary	RND Construction, Inc.	June 14, 2007
Loren Sextro	President	Serfin Construction, Inc.	June 20, 2007
Ed Korziuk	Safety Director	Sheehan Construction, Inc.	June 18, 2007
Victor Franco	Controller	Sheehan Construction, Inc.	June 18, 2007
Rich Ahrens	President	Sierra West Construction, Inc.	June 14, 2007
John Daly	President	South Placer Roofing Co., Inc.	June 19, 2007
Jack Swain	President	Southwest Systems	June 18, 2007
Craig Backstrom		SURCO Development	June 15, 2007
Tim Taylor	President	Taylor Trim & Supply, Inc.	June 18, 2007
Amy Strommer	Dir. of HR Risk Mgmt.	TWR Framing	June 20, 2007
Ben Viloría		Viloría Construction, Inc.	June 18, 2007
Becky Glass	Safety Manager	WestCor Construction of California	June 19, 2007
Michael Fisher	President	Western Wood Fabricators	June 18, 2007
Rockwell D. King	President	King Construction, Inc.	June 22, 2007
Wayne Carey		C.W. Construction, Inc.	June 25, 2007

Comment:

The commenters noted that the construction industry is in dire need of clarity and an effective pneumatic nailer and stapler standard. However, they also noted that the proposal has added two subsections (c)(3) and (c)(4) which require the nailer to be disconnected from the air supply when the tool is left unattended and that those subsections are not consistent with the advisory committee consensus. They are of the opinion that those subsections provide little or no guidance to the regulated community and that they will create confusion both for compliance and enforcement. Therefore the commenters indicated that they could not support the proposal unless subsections (c)(3) and (c)(4) are removed.

Response:

The Board accepts these comments and proposes to delete subsections (c)(3) and (c)(4) from the proposal. The Board thanks the commenters for their participation in the rulemaking process.

II. Oral Comments

Oral comments received at the June 21, 2007 Public Hearing in Oakland, California.

Comments:

Public comment regarding this proposal was unanimously in favor of the spirit of the proposal, but expressed opposition to inclusion of subsections (c)(3) and (c)(4) regarding unattended nailers. The commenters indicated that the word “unattended” is ambiguous and difficult to define, and suggested that the focus should be on training employees in safe and proper tool handling techniques. The commenters are listed below:

<u>Name:</u>	<u>Title:</u>	<u>Representing:</u>
Scotty DuPriest	Safety & Risk Manager	John F. Otto, Inc.
John Kurtz	Executive Vice President	ISANTA
Bryan Taylor	Health & Safety Coordinator	United Brotherhood of Carpenters (UBC), Southwest Regional Council, Joint Apprenticeship & Training Committee
Jodi Blom	Executive Director	California Framing Contractors Assoc.
Darin Wallace	Safety Manager	Production Framing Systems
Alex Mercier	Director of Safety & Fall Protection	Lucas & Mercier Construction
Jeff Malm	Field Supervisor	Production Framing Systems
Bruce Wick	Director of Risk Management	California Professional Association of Specialty Contractors (CalPASC)
William Callahan	Executive Director	Associated Roofing Contractors of the Bay Area Counties, Inc.
Larry Gilbert	Director of HR & Safety	Huff Construction Co., Inc.
Mark Kasel	Director of Training & Safety	SelectBuild Integrated Construction Services
Kevin Bland, Esq.	Counsel	California Framing Contractors' Assoc. Roofing Contractors Association

Mr. DuPriest opined that the proposed restrictions of subsections (c)(3) and (c)(4) might be appropriate for consumers/home users who might have children, neighbors and other untrained individuals passing through their work area, but they are impractical for trained, professional construction workers.

Mr. Bland provided a visual demonstration of the difficulties of complying with and enforcing the proposed subsections (c)(3) and (c)(4).

Response:

Based on OSHA accident statistics available, it appears that adequate training will greatly improve worker safety and that attempts to define what is “unattended” will have limited affect on worker safety. The Board therefore accepts the commenters’ requests to eliminate subsections (c)(3) and (c)(4) from the proposal. The Board thanks the commenters for their participation in the rulemaking process.

Comment by Board Member Liz Arioto:

Ms. Arioto expressed her agreement with the commenters that training should be emphasized.

Response:

The Board notes that training is covered by subsection 1704(g).

Comment by Board Member Jose Moreno:

Mr. Moreno was of the opinion that due to worker safety concerns, it is important that the proposal be adopted in a timely manner.

Response:

Board staff is attempting to process the 15-Day Notice of Proposed Modifications in an expeditious manner.

MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM  
THE 15-DAY NOTICE OF PROPOSED MODIFICATIONS

No further modifications to the information contained in the Initial Statement of Reasons are proposed as a result of the 15-day Notice of Proposed Modifications mailed on August 20, 2007.

Summary and Response to Written Comments:

William Callahan, Executive Director, Associated Roofing Contractors of the Bay Area Counties, Inc., by letter received August 22, 2007.

Mr. Callahan offered wholehearted support of the proposed standard, stating that the deletion of subsections (c)(3) and (c)(4) completely allays their concerns.

The following individuals submitted similar letters in support of the proposed standard:

<u>Name:</u>	<u>Title:</u>	<u>Representing:</u>	<u>Letters received</u>
Becky Glass	Safety Manager	WestCor California	August 24, 2007
Shelly Hinkle		Protégé Builders, Inc.	August 24, 2007
Christine Lancaster	CFO	Lancaster Burns Construction, Inc	August 24, 2007
Thomas Steele	President	Hardwood Creations	August 24, 2007
Ben Viloría	President	Viloría Construction, Inc	August 24, 2007
Harold Hoy	Owner & Vice President	Southwest Finish	August 27, 2007
Jakki Kutz	President	Allied Framers, Inc	August 27, 2007

Fred Martin	President	Martin Roofing Company	August 28, 2007
Tim Taylor	President	Taylor Trim & Supply, Inc	August 28, 2007
		Taylor Diversified, Inc	
Nelson DePinho	Owner	DePinho Roofing	August 30, 2007
Bruce Wick	Director of Risk Management	California Professional Association of Specialty Contractors (CalPASC)	September 7, 2007
		Residential Contractors Association (RCA)	
Kevin Bland, Esq.	Counsel		September 7, 2007

Response:

The Board thanks the commenters for participating in the rulemaking process and for their support for the proposal.

ADDITIONAL DOCUMENTS RELIED UPON

- IMIS Report: "DOSH Inspections with Violations Cited for Pneumatic Nail Guns – Section 1704(b)," 01/01/96 through 12/31/2006, limited to California citations. Report dated May 16, 2007, U.S. Department of Labor, Occupational Safety and Health Administration.

This document is available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board office located at 2520 Venture Oaks Drive, Suite 350, Sacramento, California.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

This standard does not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed standard. No alternative considered by the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the adopted action.